

SENATE BILL No. 373

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-13.1-2-2; IC 32-28; IC 34-30-2-136.7.

Synopsis: Mechanic's liens. Establishes a state construction registry program (program) to create and maintain an electronic data base for the filing of certain mechanic's liens that relate to the construction, alteration, or repair of Class 2 structures. Requires the office of technology to supervise the program and to contract with a third party to operate the program. Provides that the program must: (1) maintain a central data base; (2) accommodate electronic filing; (3) assign a lien identification number; (4) provide notification by electronic mail to the filer; and (5) be indexed to permit searching. Authorizes the office of technology to charge a fee sufficient to cover the expenses of the program. Makes other changes and conforming amendments.

Effective: January 1, 2010.

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January 8, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 373

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-13.1-2-2, AS AMENDED BY P.L.2-2007,
2 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2010]: Sec. 2. (a) The office shall do the following:

4 (1) Develop and maintain overall strategy and architecture for the
5 use of information technology in state government.

6 (2) Review state agency budget requests and proposed contracts
7 relating to information technology at the request of the budget
8 agency.

9 (3) Coordinate state information technology master planning.

10 (4) Maintain an inventory of significant information technology
11 resources and expenditures.

12 (5) Manage a computer gateway to carry out or facilitate public,
13 educational, and governmental functions.

14 (6) Provide technical staff support services for state agencies.

15 (7) Provide services that may be requested by the following:

16 (A) The judicial department of state government.

17 (B) The legislative department of state government.



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- 1 (C) A state educational institution.
 2 (D) A political subdivision (as defined in IC 36-1-2-13).
 3 (E) A body corporate and politic created by statute.
 4 (F) An entity created by the state.
- 5 (8) Monitor trends and advances in information technology.
 6 (9) Review projects, architecture, security, staffing, and
 7 expenditures.
 8 (10) Develop and maintain policies, procedures, and guidelines
 9 for the effective and secure use of information technology in state
 10 government.
 11 (11) Advise the state personnel department on guidelines for
 12 information technology staff for state agencies.
 13 (12) Conduct periodic management reviews of information
 14 technology activities within state agencies upon request.
 15 (13) Seek funding for technology services from the following:
 16 (A) Grants.
 17 (B) Federal sources.
 18 (C) Gifts, donations, and bequests.
 19 (D) Partnerships with other governmental entities or the
 20 private sector.
 21 (E) Appropriations.
 22 (F) Any other source of funds.
- 23 **(14) Supervise the state construction registry program**
 24 **established by IC 32-28-3.5-2.**
 25 ~~(14)~~ (15) Perform other information technology related functions
 26 and duties as directed by the governor.
 27 (b) The office may adopt rules under IC 4-22-2 that are necessary
 28 or appropriate in carrying out its powers and duties.
- 29 SECTION 2. IC 32-28-3-1, AS AMENDED BY P.L.146-2008,
 30 SECTION 674, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JANUARY 1, 2010]: Sec. 1. (a) A contractor, a
 32 subcontractor, a mechanic, a lessor leasing construction and other
 33 equipment and tools, whether or not an operator is also provided by the
 34 lessor, a journeyman, a laborer, or any other person performing labor
 35 or furnishing materials or machinery, including the leasing of
 36 equipment or tools, for:
 37 (1) the erection, alteration, repair, or removal of:
 38 (A) a house, mill, manufactory, or other building; or
 39 (B) a bridge, reservoir, system of waterworks, or other
 40 structure;
 41 (2) the construction, alteration, repair, or removal of a walk or
 42 sidewalk located on the land or bordering the land, a stile, a well,

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1 a drain, a drainage ditch, a sewer, or a cistern; or
 2 (3) any other earth moving operation;
 3 may have a lien as set forth in this section.
 4 (b) A person described in subsection (a) may have a lien separately
 5 or jointly:
 6 (1) upon the house, mill, manufactory, or other building, bridge,
 7 reservoir, system of waterworks, or other structure, sidewalk,
 8 walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:
 9 (A) that the person erected, altered, repaired, moved, or
 10 removed; or
 11 (B) for which the person furnished materials or machinery of
 12 any description; and
 13 (2) on the interest of the owner of the lot or parcel of land:
 14 (A) on which the structure or improvement stands; or
 15 (B) with which the structure or improvement is connected;
 16 to the extent of the value of any labor done or the material furnished,
 17 or both, including any use of the leased equipment and tools.
 18 (c) All claims for wages of mechanics and laborers employed in or
 19 about a shop, mill, wareroom, storeroom, manufactory or structure,
 20 bridge, reservoir, system of waterworks or other structure, sidewalk,
 21 walk, stile, well, drain, drainage ditch, cistern, or any other earth
 22 moving operation shall be a lien on all the:
 23 (1) machinery;
 24 (2) tools;
 25 (3) stock;
 26 (4) material; or
 27 (5) finished or unfinished work;
 28 located in or about the shop, mill, wareroom, storeroom, manufactory
 29 or other building, bridge, reservoir, system of waterworks, or other
 30 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer,
 31 cistern, or earth used in a business.
 32 (d) If the person, firm, limited liability company, or corporation
 33 described in subsection (a) or (c) is in failing circumstances, the claims
 34 described in this section shall be preferred debts whether a claim or
 35 notice of lien has been filed.
 36 (e) Subject to subsection (f), a contract:
 37 (1) for the construction, alteration, or repair of a Class 2 structure
 38 (as defined in IC 22-12-1-5);
 39 (2) for the construction, alteration, or repair of an improvement on
 40 the same real estate auxiliary to a Class 2 structure (as defined in
 41 IC 22-12-1-5);
 42 (3) for the construction, alteration, or repair of property that is:

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(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2);

(iv) rural electric membership corporation formed under IC 8-1-13-4;

(v) rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) not-for-profit utility (as defined in IC 8-1-2-125); regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction; may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure, or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

(1) be in writing;

(2) contain specific reference by legal description of the real estate to be improved;

(3) be acknowledged as provided in the case of deeds; and

(4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract:

(A) for a contract relating to the work described in subsection (e)(3), be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is located; or

(B) for a contract relating to the work described in subsection (e)(1), (e)(2), and (e)(4), be filed with the designated agent (as defined in IC 32-28-3.5-1(2)). At the time of filing, the following information must be entered into the data base (as defined in IC 32-28-3.5-1(1)) of the designated agent:

(i) The county where the property is located.

(ii) The property's street address.

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- (iii) The property's tax identification number.
- (iv) The parcel and lot number, if any.
- (v) The name of the principal contractor or contractors.
- (vi) The name of the project or development, if any.
- (vii) The owner's name, electronic mail address, and address as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor, or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor or the county assessor at the time the no lien contract or agreement is filed.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder **or designated agent**.

(g) Upon the filing of a contract under subsection ~~(f)~~ **(f)(4)**, the recorder shall:

- (1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;
- (2) index the contract in the name of the:
 - (A) contractor; and
 - (B) owner;
 in books kept for that purpose; and
- (3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

- (1) a contractor, subcontractor, mechanic; or
- (2) anyone other than the occupying owner or the owner's legal representative;

must ~~furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written file~~ **a notice** of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed **in the designated agent's data base**. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land. **The notice must include the claimant's name, address, and electronic mail address, and the information required by subsection (f)(B)(i) through (f)(B)(vii).**

- (i) A person, firm, partnership, limited liability company, or

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corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor (if any) or the county assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate: file a notice in the designated agent's lien data base of the delivery or work and of the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed. The furnishing and filing of the notice are conditions precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate. The notice must include the claimant's name, address, electronic mail address, and the information required by subsection (f)(B)(i) through (f)(B)(vii).

(j) A person, firm, partnership, limited liability company, or corporation that has a contract with the owner:

(1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure; or

(3) to prepare property for Class 2 residential construction; must notify the owner of the existence of the designated agent's lien data base in the contract as a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land. Notice of the existence of the data base shall be made to the owner by certified mail on a form prescribed by the Indiana office of technology.

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(j) (k) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 or 3.1 of this chapter before recording the deed by which the purchaser takes title.

SECTION 3. IC 32-28-3-3, AS AMENDED BY P.L.146-2008, SECTION 675, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 3. (a) Except as provided in subsection (b) section 3.1 of this chapter, a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(c) (b) A statement and notice of intention to hold a lien filed under this section must specifically set forth:

- (1) the amount claimed;
- (2) the name and address of the claimant;
- (3) the owner's:

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- 1 (A) name; and
 2 (B) latest address as shown on the property tax records of the
 3 county; and
 4 (4) the:
 5 (A) legal description; and
 6 (B) street and number, if any;
 7 of the lot or land on which the house, mill, manufactory or other
 8 buildings, bridge, reservoir, system of waterworks, or other
 9 structure may stand or be connected with or to which it may be
 10 removed.

11 The name of the owner and legal description of the lot or land will be
 12 sufficient if they are substantially as set forth in the latest entry in the
 13 transfer books described in IC 6-1.1-5-4 of the county auditor or, if
 14 IC 6-1.1-5-9 applies, the transfer books of the township assessor (if
 15 any) or the county assessor at the time of filing of the notice of
 16 intention to hold a lien.

17 ~~(d)~~ (c) The recorder shall:

- 18 (1) mail, first class, one (1) of the duplicates of the statement and
 19 notice of intention to hold a lien to the owner named in the
 20 statement and notice not later than three (3) business days after
 21 recordation;
 22 (2) post records as to the date of the mailing; and
 23 (3) collect a fee of two dollars (\$2) from the lien claimant for each
 24 statement and notice that is mailed.

25 The statement and notice shall be addressed to the latest address of the
 26 owner as specifically set out in the sworn statement and notice of the
 27 person intending to hold a lien upon the property.

28 SECTION 4. IC 32-28-3-3.1 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 30 JANUARY 1, 2010]: **Sec. 3.1. (a) This section applies to a person:**

- 31 **(1) who performs labor or furnishes materials or machinery**
 32 **described in section 1 of this chapter related to:**
 33 **(A) a Class 2 structure (as defined in IC 22-12-1-5); or**
 34 **(B) an improvement on the same real estate auxiliary to a**
 35 **Class 2 structure; or**
 36 **(2) who prepares property for Class 2 residential**
 37 **construction.**

38 **(b) A person who wishes to acquire a lien upon property,**
 39 **whether the claim is due or not, must enter the following**
 40 **information into the designated agent's lien data base not more**
 41 **than sixty (60) days after last performing labor or furnishing**
 42 **materials or machinery described in section 1 of this chapter:**

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- (1) The county where the property is located.
- (2) The property's street address.
- (3) The property's tax identification number.
- (4) The parcel and lot number, if any.
- (5) The name of the principal contractor or contractors.
- (6) The name of the project or development, if any.
- (7) The owner's name, electronic mail address, and address as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor, or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor or the county assessor at the time the no lien contract or agreement is filed.
- (8) The claimant's name, address, and electronic mail address.

(c) The lien attaches to the property when all of the following have been done:

- (1) The information has been entered into the data base.
- (2) The claimant has electronically signed the following verification:

"I affirm, under the penalties for perjury, that I have performed labor or furnished materials or machinery for the improvement of this property within the last sixty (60) days and that the information I have entered into the designated agent's lien data base is true and correct."

- (3) The claimant electronically transmits the information and the verification to the data base.
- (4) The designated agent issues an electronic receipt containing a lien identification number for the lien.

(d) The lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

SECTION 5. IC 32-28-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 5. (a) As used in this section, "lender" refers to:

- (1) an individual;
- (2) a supervised financial organization (as defined in IC 24-4.5-1-301);
- (3) an insurance company or a pension fund; or
- (4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10.

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When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections ~~(c)~~ (d) and ~~(d)~~ (e), a lien created under this chapter has priority over a lien created after it.

(c) The designated agent shall file the lien in the data base when presented under section 3.1 of this chapter. The designated agent shall charge a fee for filing the lien in the data base in accordance with IC 32-28-3.5-3. When the lien is filed in the data base, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (d) and (e), a lien created under this chapter has priority over a lien created after it.

~~(c)~~ (d) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

~~(d)~~ (e) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

- (1) A Class 2 structure (as defined in IC 22-12-1-5).
- (2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).
- (3) Property that is:
 - (A) owned, operated, managed, or controlled by:
 - (i) a public utility (as defined in IC 8-1-2-1);
 - (ii) a municipally owned utility (as defined in IC 8-1-2-1);
 - (iii) a joint agency (as defined in IC 8-1-2.2-2);
 - (iv) a rural electric membership corporation formed under IC 8-1-13-4;
 - (v) a rural telephone cooperative corporation formed under IC 8-1-17; or
 - (vi) a not-for-profit utility (as defined in IC 8-1-2-125);
 - regulated under IC 8; and
 - (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

SECTION 6. IC 32-28-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 6. (a) A person

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may enforce a lien by filing a complaint in the circuit or superior court of the county where the real estate or property that is the subject of the lien is situated. The complaint must be filed not later than one (1) year after:

(1) the date the statement and notice of intention to hold a lien was recorded **or entered into the data base** under section 3 **or 3.1** of this chapter; or

(2) subject to subsection (c), the expiration of the credit, if a credit is given.

(b) Except as provided in subsection (c), if a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) A credit does not extend the time for filing an action to enforce the lien under subsection (a)(2) unless:

(1) the terms of the credit are in writing;

(2) the credit was executed by:

(A) the lienholder; and

(B) all owners of record; and

(3) the credit was recorded:

(A) in the same manner as the original statement and notice of intention to hold a lien; and

(B) not later than one (1) year after the date the statement and notice of intention to hold a lien was recorded.

(d) If the lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the property subject to the lien. The officers making the sale shall sell the property without any relief from valuation or appraisal laws.

SECTION 7. IC 32-28-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 10. (a) A lien **created under section 3 of this chapter** is void if both of the following occur:

(1) The owner of property subject to a mechanic's lien or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.

(2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice.

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the lienholder at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of

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service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than thirty (30) days have passed since the notice was received by the lienholder.
- (3) That no action for foreclosure of the lien is pending.
- (4) That no unsatisfied judgment has been rendered on the lien.

(c) The recorder shall:

- (1) record the affidavit of service in the miscellaneous record book of the recorder's office; and
 - (2) certify on the face of the record any lien that is fully released.
- When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

SECTION 8. IC 32-28-3-10.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 10.1. (a) A lien created under section 3.1 of this chapter is void if both of the following occur:**

- (1) The owner of property subject to the mechanic's lien or any person or corporation having an interest in the property, including a mortgagee or a lienholder, files a notice in the designated agent's lien data base to file an action to foreclose the lien.**
- (2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after the notice is entered in the designated agent's lien data base.**

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by filing a notice in the designated agent's lien data base may file an affidavit of entry of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must be served on the designated agent after recording. The affidavit must state the following:

- (1) The facts of the notice.**
- (2) That more than thirty (30) days have passed since the notice was received by the lienholder.**
- (3) That no action for foreclosure of the lien is pending.**
- (4) That no unsatisfied judgment has been rendered on the**

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lien.

(c) The designated agent shall:

(1) file the affidavit of entry of notice in the lien data base;
and

(2) certify in the lien data base any lien that is fully released.

When the designated agent files the affidavit and certifies in the lien data base the release of a lien under this subsection, the real estate described in the lien is released from the lien.

SECTION 9. IC 32-28-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]:

Chapter 3.5. Construction Liens

Sec. 1. The following definitions apply throughout this chapter:

(1) "Data base" means the data base established and maintained for purposes of the state construction registry program established by section 2 of this chapter.

(2) "Designated agent" means a third party with which the office contracts to establish, operate, and maintain the data base.

(3) "Filing" means all documents required to be filed with the designated agent under IC 32-28-3 or IC 32-28-6.

(4) "Office" refers to the office of technology established by IC 4-13.1-2-1.

(5) "Principal" means the person or entity who has entered into the contract for construction with the owner.

(6) "Program" means the state construction registry program established by section 2 of this chapter.

Sec. 2. (a) The state construction registry program is established under the supervision of the office.

(b) The following requirements apply to the program:

(1) The program shall provide a central data base and repository for statements and notices of intention to hold liens and all other filings identified in IC 32-28-3 and IC 32-28-6 concerning construction projects for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5), for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure, or to prepare property for Class 2 residential construction. The program must require that the user confirm the accuracy of the data entered.

(2) The program must accommodate electronic filing of statements and notices of intention to hold liens, releases of

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mechanic's liens, and all other filings identified in IC 32-28-3 and IC 32-28-6 concerning construction projects for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5), for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure, or to prepare property for Class 2 residential construction.

(3) The program must assign a lien identification number to each lien filed under the program.

(4) The program must provide notification by electronic mail to the person who makes a filing. The electronic mail notification must include:

- (A) the date of the filing;
- (B) the time of the filing; and
- (C) the contents of the filing.

(5) The data base shall be indexed to permit searching by:

- (A) the name of an owner;
- (B) the name of the contractor with which the lien claimant has a contract related to the lien;
- (C) the name of the development, or other project name, if any;
- (D) the address of the property;
- (E) the lot or parcel number, if available;
- (F) the county where the property is located;
- (G) the lien identification number;
- (H) the date the lien was filed;
- (I) the tax identification number of the property;
- (J) the date the lien was released; and
- (K) any other identifier selected by the office.

Sec. 3. (a) The office may charge a fee for the use of the data base. Fees authorized under this section must be sufficient to cover the expenses of providing necessary services and of establishing, operating, and maintaining the data base. The fees may not exceed the amount reasonably required to provide necessary services and to create, maintain, and operate the program and the data base. The office may establish different fees for different methods of filing.

(b) The office may provide by contract that the designated agent may retain fees collected by the designated agent.

Sec. 4. A person who files a notice of intention to hold a lien, release of mechanic's lien, or any other filing identified in IC 32-28-3 and IC 32-28-6 concerning construction projects:

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(1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure; or

(3) to prepare property for Class 2 residential construction; is responsible for verifying the accuracy and completeness of the information entered into the data base.

Sec. 5. The office shall contract with a designated agent to operate, establish, and maintain the data base. The office shall ensure compliance with a contract entered into under this section. If the operation of the data base is transferred to a new designated agent, the office shall act as custodian of the data.

Sec. 6. All statements and notices of intention to hold liens and all other filings identified in IC 32-28-3 and IC 32-28-6 concerning construction projects:

(1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);

(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure; or

(3) to prepare property for Class 2 residential construction; are filed and recorded on the date of their electronic transmission to the data base.

Sec. 7. (a) Information contained in the data base is a public record.

(b) The designated agent shall permit a person who wishes to inspect records maintained in the data base to inspect the records in the same manner as if the records were maintained by a public agency under IC 5-14-3.

(c) The designated agent may charge a fee consistent with fees described in IC 5-14-3 (including a fee for enhanced access under IC 5-14-3-3.5 and IC 5-14-3-3.6) to a person who wishes to inspect or copy records contained in the data base.

Sec. 8. (a) Except as provided in subsection (b) or (c), a designated agent is immune from civil liability based on an act or omission relating to the provision of necessary services or the establishment, operation, or maintenance of the data base.

(b) A designated agent is civilly liable for an act or omission that amounts to gross negligence or willful or wanton misconduct.

(c) If the contract between the office and a designated agent requires the designated agent to accept civil liability for certain

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1 acts or omissions relating to the provision of necessary services or
 2 the establishment, operation, or maintenance of the data base, the
 3 designated agent is civilly liable in accordance with the terms of the
 4 contract.

5 **Sec. 9. The office may adopt rules under IC 4-22-2 to administer**
 6 **this chapter.**

7 SECTION 10. IC 32-28-6-1 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. (a) If:

- 9 (1) a person owns or has an interest in real estate to which a
 10 mechanic's lien has been attached;
 11 (2) the debt secured by the lien has satisfied or paid; and
 12 (3) the person who owns or has an interest in the encumbered real
 13 estate demands that the lien be released;

14 the lienholder shall release the lien within fifteen (15) days after the
 15 demand.

16 (b) If the lienholder does not release the lien within fifteen (15) days
 17 after the demand, the lienholder is liable to the person who owns or has
 18 an interest in the real estate to which the mechanic's lien has been
 19 attached for the greater of:

- 20 (1) actual damages; or
 21 (2) liquidated damages in the sum of ten dollars (\$10) per day
 22 from the fifteenth day until the release or expiration of the lien.

23 (c) A person who owns or who has an interest in real estate to which
 24 a mechanic's lien has been attached **in accordance with IC 32-28-3-3**
 25 may, at any time thirteen (13) months after the date of the filing of the
 26 notice of the lien, file in the office of the recorder of the county in
 27 which the real estate is situated an affidavit stating that no suit for the
 28 foreclosure of the lien is pending and that no unsatisfied judgment has
 29 been rendered on the lien.

30 (d) **A person who owns or who has an interest in real estate to**
 31 **which a mechanic's lien has been attached in accordance with**
 32 **IC 32-28-3-3.1 may, at any time thirteen (13) months after the date**
 33 **of the filing of the notice of the lien, file in the designated agent's**
 34 **lien data base an affidavit stating that no suit for the foreclosure of**
 35 **the lien is pending and that no unsatisfied judgment has been**
 36 **rendered on the lien.**

37 SECTION 11. IC 32-28-6-2 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2. (a) If a person
 39 who owns or has an interest in real estate encumbered by a mechanic's
 40 lien **filed in accordance with IC 32-28-3-3** files the affidavit
 41 described in section 1(c) of this chapter, the recorder of the county in
 42 which the encumbered real estate is situated shall immediately record

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1 the affidavit and certify on the record of the lien that the mechanic's
 2 lien is fully satisfied and that the real estate described in the mechanic's
 3 lien is released from the lien. The fee of the recorder for the filing and
 4 recording of the affidavit shall be an amount prescribed by law and
 5 shall be paid by the person filing the affidavit.

6 **(b) If a person who owns or has an interest in real estate**
 7 **encumbered by a mechanic's lien filed in accordance with**
 8 **IC 32-28-3-3.1 files the affidavit described in section 1(d) of this**
 9 **chapter in the designated agent's lien data base, the designated**
 10 **agent shall certify on the record of the lien that the mechanic's lien**
 11 **is fully satisfied and that the real estate described in the mechanic's**
 12 **lien is released from the lien. The fee of the designated agent for**
 13 **the filing and recording of the affidavit must be an amount**
 14 **prescribed by law and shall be paid by the person filing the**
 15 **affidavit.**

16 SECTION 12. IC 34-30-2-136.7 IS ADDED TO THE INDIANA
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JANUARY 1, 2010]: **Sec. 136.7. IC 32-28-3.5-8**
 19 **(Concerning the act or omission of a designated agent, as defined**
 20 **in IC 32-28-3.5-1, relating to the provision of necessary services or**
 21 **the establishment, operation, or maintenance of the data base**
 22 **established and maintained for the purposes of the state**
 23 **construction registry program under IC 32-28-3.5).**

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